

person does not hold QS in an IFQ regulatory area on the date the compensation is issued, that person's compensation will be issued as unblocked. If a person does hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be added to their existing QS in that IFQ regulatory area. The resulting QS amount will be blocked or unblocked according to the criteria found at § 679.40(a). Compensation will be calculated for each non-CDQ area using the following formula:

$$Q_N = \frac{(Q_C \times QSP_N \times RATE) / (SUM_{CDQ} - [RATE \times SUM_{TAC}])}{([1 - RATE] \times TAC_{AVE}) (QSP_C \times [CDQ_{PCT} - RATE])}$$

Where:

Q_N = quota share in non-CDQ area

Q_C = quota share in CDQ area

QSP_N = quota share pool in non-CDQ area (as existing on January 31, 1995)

$RATE$ = SUM_{CDQ} /average of the TAC (1988–1994) for all CDQ and non-CDQ areas

TAC_{AVE} = average of the TAC (1988–1994) for CDQ area

QSP_C = quota share pool in CDQ area (as existing on January 31, 1995)

CDQ_{PCT} = CDQ percentage for CDQ area

SUM_{CDQ} = sum $[TAC_{AVE} \times CDQ_{PCT}]$

SUM_{TAC} = sum $[TAC_{AVE}]$

(k) *Transfer to the surviving spouse.* (1) On the death of an individual who holds QS or IFQ, the surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will that is probated. The Regional Administrator will approve an Application for Transfer to the surviving spouse when sufficient evidence has been provided to verify the death of the individual.

(2) The Regional Administrator will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (g)(2) of this section.

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§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area. Except as provided in paragraph (k) of this section or in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category. Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

(b) *Gear—(1) IFQ Fisheries.* Halibut IFQ must be used only to harvest halibut with fishing gear authorized in § 679.2. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the GOA.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

(c) *Requirements and deductions.* (1) Any individual who harvests halibut or sablefish with fixed gear must:

- (i) Have a valid IFQ card.
- (ii) Be aboard the vessel at all times during the fishing operation.
- (iii) Sign any required fish ticket.
- (iv) Sign the IFQ landing report required by §§ 679.5(l)(2)(ii)(C) and (iii)(B).

(2) The scale weight of the halibut or sablefish product actually measured at the time of landing, required by § 679.5(l)(2)(vi) to be included in the IFQ landing report, shall be the only source of information used by NMFS to debit an IFQ account. An IFQ account will be debited as indicated in Table 3 to this part.

- (i) *Sablefish product*. [Reserved]
- (ii) [Reserved]
- (iii) *Halibut conversion factors*.

Product code	Product description	Conversion factor
04	Gutted, head on	0.90
05	Gutted, head off	1.00
54	Gutted, head on, with ice and slime.	0.88
55	Gutted, head off, with ice and slime.	0.98

(d) *Emergency waiver*. The requirement of paragraph (c) of this section for an individual IFQ card holder to be aboard the vessel during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or IFQ sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use*. (1) No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(f) *Halibut QS use*. Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(1) *IFQ regulatory area 2C*. 599,799 units of halibut QS.

(2) *IFQ regulatory areas 2C, 3A, and 3B*. 1,502,823 units of halibut QS.

(3) *IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E*. 495,044 units of halibut QS.

(g) *Limitations on QS blocks*—(1) *Number of blocks per species*. (i) Except as provided in paragraph (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks for each species in any IFQ regulatory area.

(ii) If that person, individually or collectively, holds unblocked QS for a species in an IFQ regulatory area, such

person may only hold one QS block for that species in that IFQ regulatory area.

(2) *Holding or to hold blocks of QS*. For purposes of this section, “holding” or “to hold” blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

(h) *Vessel limitations*—(1) *Halibut*. (i) Except as provided in paragraph (h)(1)(ii) of this section, no vessel may be used, during any fishing year, to harvest more than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.

(ii) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(2) *Sablefish*. (i) Except as provided in paragraph (h)(2)(ii) of this section, no vessel may be used, during any fishing year, to harvest more than 1 percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas.

(ii) In the IFQ regulatory area east of 140° W. long., no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(3) *Excess*. A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

(i) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by individuals*. In addition to the requirements of paragraph (c) of this section, IFQ cards issued for IFQ resulting from QS assigned to vessel categories B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual owns at least a 20-percent interest in the vessel

and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20-percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of QS assigned to vessel categories B, C, or D for halibut in IFQ regulatory area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferrable.

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations and partnerships.* Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided that the corporation or partnership owns at least a 20- percent interest in the vessel on which its IFQ is fished, and that it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This provision is not transferrable and does not apply to QS assigned to vessel categories B, C, or D for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to §679.41(c) of this part and be used pursuant to paragraphs (c) and (i) of this section.

(1) A corporation or partnership, except for a publicly-held corporation, that receives an initial allocation of QS assigned to vessel categories B, C, or D loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph (j), "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Administrator must be notified of a change in a corporation or partnership as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) QS assigned to vessel categories B, C, or D and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in §679.41 of this part, before it may be used at any time after the effective date of the change.

(5) A corporation or a partnership that received an initial allocation of QS assigned to categories B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

(k) *Processing of fish other than IFQ halibut and IFQ sablefish.* Fish other than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons:

(1) Are authorized to harvest IFQ halibut or IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel category A; or

(2) Are authorized to harvest IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel categories B or C unless any person aboard the vessel is authorized to harvest IFQ halibut based on allocations of IFQ resulting from QS assigned to vessel categories B, C, or D.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 43314, Aug. 22, 1996; 62 FR 7948, Feb. 21, 1997; 62 FR 19690, Apr. 23, 1997; 62 FR 60669, Nov. 12, 1997; 62 FR 66311, Dec. 18, 1997; 63 FR 11167, Mar. 6, 1998; 63 FR 47368, Sept. 4, 1998; 63 FR 54611, Oct. 13, 1998; 64 FR 24962, May 10, 1999]

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under this subpart as well as § 679.4(c), § 679.4(g), and portions of subpart C of this part that apply to the halibut and sablefish CDQ program.

(b) *Who may appeal.* Any person whose interest is directly and adversely affected by an initial administrative determination may file a written appeal. For purposes of this section, such persons will be referred to as “applicant” or “appellant.”

(c) *Submission of appeals.* Appeals must be in writing and must be submitted in original form to the Regional Administrator. Contact the Regional Administrator for appeals address. Appeals transmitted by electronic means will not be accepted.

(d) *Timing of appeals.* (1) If an applicant appeals an initial administrative determination, the appeal must be filed not later than 60 days after the date the determination is issued.

(2) The time period within which an appeal may be filed begins to run on the date the initial administrative determination is issued. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(e) *Address of record.* NMFS will establish as the address of record the address used by the applicant in initial correspondence to Chief, RAM Divi-

sion, after the application period has begun. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant’s actual address has changed without notification to NMFS.

(f) *Statement of reasons for appeals.* Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(g) *Hearings.* The appellate officer will review the applicant’s appeal and request for hearing, and has discretion to proceed as follows:

(1) Deny the appeal;

(2) Issue a decision on the merits of the appeal, if the record contains sufficient information on which to reach final judgment; or

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law.

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions.

(iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the